Ohio. Bd. of canal comm. Special report of Board of canal comm.

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SPECIAL REPORT

OF THE

BOARD OF CANAL COMMISSIONERS

IN REPLY TO

A RESOLUTION OF THE SENATE,

RELATIVE TO THE

CLAIM OF MORRIS SEELY.

FEBRUARY 19, 1839.

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REPORT.

CANAL COMMISSIONERS' OFFICE,
Columbus, February 19th, 1839.

Honorable Senate of the State of Ohio:

In obedience to a resolution of the Senate requesting "the canal commissioners to report to the Senate at the earliest day possible all the evidence and papers in their possession in relation to the claim of Morris Seeley"—the board respectfully submit the following report:

That they find on file in this office, the original proposition of Mr. Seeley, made to the board of canal commissioners on the 14th January, 1829, a copy of which is annexed, marked A—also, a record of the order accepting said proposition; a copy of a letter to A. Duncan, Esq. chairman of a select committee of the Senate; and a report of the board of canal commissioners on this subject; copies of which are also attached, marked B, C, D. The board find no other original papers on file or on record in this office, except those embraced in full in the report above named; these matters, together with the two several "acts for the relief of Morris Seeley," passed February 25th 1833, and February 21st, 1834, embrace all the information this board possess relative to this claim.

By order of the board.
LEANDER RANSOM, *Act. Com.*

A.

Columbus, January 14th, 1829.

To the Honorable, the Board of Canal Commissioners:

GENTLEMEN: In relation to the hydraulic powers and privileges of the Miami canal at Dayton, I would beg leave to submit to you the follow proposition, viz:

I will *sell* to the State of Ohio, any quantity of land, (not exceeding ten acres), at such prices as the board of canal commissioners, or the acting canal commissioner, shall consider a fair price—and at such point or points, as he, or they, shall deem the most eligible for the control of such water power. Or, I will *lease* the water privileges at *four hundred dollars a year* for the first ten years, and subject to a re-appraisement

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every five years thereafter. Or, I will be willing to pay *six hundred* dollars a year, *without* such appraisement, perpetually. Your *immediate* attention to this proposition would be gratifying to me, inasmuch, as it will enable me (in case we should agree) to facilitate the excavation of the basin, and I would beg leave to add—advance the great interests of the State generally, and those of the town of Dayton in particular.

(Signed) MORRIS SEELY.

B.

CANAL COMMISSIONERS' OFFICE,
Columbus, January 15th 1839.

"The proposition of Morris Seeley to convey to the State for the use of the canal fund one or more acres of ground on the out-lot No. 3, or No. 17, in the town of Dayton, for the purpose of selling or leasing on said ground the water which passes from the feeder into the canal below, was considered: Whereupon it was resolved, that the board will purchase of the said Seeley, from one to two acres of ground at the rate of five hundred dollars per acre, to be selected by the acting commissioner—provided the title is made free from incumbrances, and the said Seeley, or others interested, shall make a cut from the canal, and upon the same level, up to a convenient point for the use of the water, on said Seeley's ground, for the free flow of the tail race water into the canal."

C.

CANAL COMMISSIONERS' OFFICE.
Columbus, January 2, 1839.

SIR: In reply to your note of the 31st ult. covering a copy of the memorial of Morris Seeley, and requesting this board to communicate to the select committee to which said memorial is referred, any information of which it may be possessed in relation to the subject of said memorial—the board of canal commissioners has the honor to state, that on the 15th of January, 1829, an order was made to purchase of said Seeley from *one* to *two* acres of land in the town of Dayton, with a view to enable the commissioners to sell or lease at public sale for hydraulic uses that portion of the water of Mad river feeder which might be required to supply the wants of navigation, thence to the Miami feeder, a copy of which order and of the proposition upon which it was based, is set forth in the memorial; and that under this order *one* and a *half* acres in out lot No. 3, situated immediately adjoining the Mad river feeder, was selected and purchased.

The order for the said purchase was made with the understanding that said Seeley would, as he proposed to do, make a cut from the canal below, and upon the same level, up to the ground proposed to be purchased. This cut was designed, so far as the State was concerned, to serve as a tail-race through which the water, after being applied to dydraulic purposes, should flow into the canal below the mouth of the feeder.

There was no specific agreement "to make sale of said water power *as soon* as the excavation was performed," as is alleged in the memorial; but it was the intention of the board that the hydraulic power in question should be put into market when the excavation of the tail-race should be completed, and that it should be sold, or leased, as soon as such offers for it should be received as would comport with the public interest to accept.

As the board is informed by the acting commissioner, repeated applications were made to him by the memorialist and other citizens of Dayton in the course of the summer following, to advertise the hydraulic power in question for sale. This he declined doing until the excavation of the proposed tail-race should be completed, or so far completed as to remove all doubts of its being done; but at the same time stated his intention of advertising it for sale, when the work on the race should be so far advanced as to warrant it.

In October of the same year, considering the work on the race so far completed, as to remove all doubts of its being done (though it was not at that time fully completed and is not as yet) public notice was given by the acting commissioners, inviting proposals until a given day in the latter part of November, for leasing water power at sundry points on the Miami canal, and among others ot this point.

A few days prior to the day named, to which proposals would be received, notice of an injunction in the name of the heirs of D. C. Cooper, allowed by one of the Judges of the court of common pleas, was served on the acting commissioner, enjoining the sale or lease of said power.

This injunction was dissolved by the supreme court, after which a bill of review was filed, which was dismissed by the supreme court in bank at its late session, as stated by the memorialist.

From the foregoing statement, it will be seen that there was no delay on the part of the State in bringing the water power at this point into market as proposed, and intended, when the purchase of the gound was made, except what has arisen from the injunction referred to.

By order of the board.

To A. DUNCAN, Esq., *Chairman, select committee of the Senate.*

D.

CANAL COMMISSIONERS' OFFICE,
Columbus, January 1st, 1834.

To the Honorable, the Senate of Ohio:

In compliance with a resolution of the Senate of the 21st December instant, requesting the Board of Canal Commissioners to report to the Senate whether any proceedings have been had by the direction of the board to carry into effect the provisions of "an act for the relief of Morris Seely," passed February 25, 1833, and if any measures have been adopted for the purpose of carrying said act into effect, to report the result of such proceedings; and that said board also report to the Senate whether there is any surplus water power created by the Mad river feeder of the Miami canal at or near the town of Dayton; and if

so, to report what disposition has been or should be made of such surplus water power; and the point on or near said feeder where the same can be most advantageously employed; the board now respectfully submit the following report:

That the act for the relief of Morris Seely, according to our understanding of its provisions, requires the board, firstly, to ascertain whether the State can derive any benefits or advantages from the works constructed by Morris Seely near Dayton, mentioned in said act, and only authorizes the payment of a sum of money to said Morris Seely, in the event of its being ascertained that the said works can be made beneficial to the State. Entertaining this view of the subject, the board at their meeting in Cincinnati, in April last, passed the following resolution, to wit:

"*Resolved*, That Samuel Forrer, acting canal commissioner for the Miami canal, be instructed to cause such surveys and estimates to be made as will be necessary to determine whether the State will derive any benefit, and if any benefit, the amount thereof, from the branch canal basin and race partially executed by Morris Seely, near the town of Dayton, and report the same to the board at their next meeting."

At a meeting of the board held at Dayton on the 27th day of June last, Mr. Forrer, acting commissioner, reported as follows: "In order to meet the requisitions of the above resolution, Mr. Andrew Young, constructing engineer on the Miami canal north of Dayton, was directed to estimate the cost of finishing the excavation of Morris Seely's mill race, together with the cost of constructing stone culverts and permanent pass ways at all places where streets and public roads cross it; and the result of the survey and estimates is, that to complete the whole in the manner that will involve the State in the least annual expense for repairs it will cost the sum of $1,823 32.

"To which should be added for unavoidable repairs the sum of twelve dollars annually, or the present sum of $200 00

"Making the entire cost the sum of..... 2,023 32

"To test the value of this expenditure to the State, the expense of so constructing the Miami canal at this point as to locate the lock at which the water power is derived on the ground owned by the State, and thus enable the State to pass the surplus water from the upper to the lower level of the canal on her own ground, and in the most simple manner and shortest distance practicable, was next estimated. The result of this experiment gives the sum of $2,601 87 as the probable expense, or a difference *so far alone as the cost is concerned*, of $578 55 in favor of adopting Morris Seely's race.

"An estimate was also made of the probable expense of conducting the water from the State lot in a tail race along the east side of the canal to the present site of the contemplated lock, which gives the sum of 867 dollars, or 1,156 dollars less than the estimated

cost of completing Mr. Seely's race. But as the tail race thus estimated would pass through ground not owned by the State, some doubts may be entertained of the right of the State to make the improvement in question. It is also necessary to state that the ground through which Morris Seely's race passes, is owned in lots by different individuals, some of whom have yet given no satisfactory assurance of an intention to cede to the State the right to the water way; although it is believed that such right may be obtained without much difficulty or expense.

"It is further suggested that there is a probability of the State being able to purchase the quantity of ground necessary for the purpose of using this water at the point best adapted to the economical construction of the lock, and on terms favorable to the State; but as no distinct proposal has been made by those who alone have the right to sell at that point, no estimate can now be made of the comparative value of this and other plans named.

"A map of the mill race, canal, and adjoining lots, and of the roads, &c., together with the estimates of the engineer, are herewith submitted."

In order to a full understanding of the case, it is proper to observe, that the canal and basin partially constructed by Morris Seely cannot be advantageously used as any part of the Miami canal, nor of the extension of the Miami canal, as will be obvious upon an inspection of the map herewith submitted. Nor is it perceived that the State can advantageously make any other use of said works of Morris Seely, than as a tail race for conveying the water of the Mad river feeder into the level below of the canal, after having been used to propel mills or other machinery on the lot bought by the State of said Seely for that purpose. And it will be seen from the foregoing report of the acting commissioner, that the cost of finishing the branch canal of Morris Seely, so as to make it answer the purpose of a tail race will be nearly as great as the expense of placing the lock about to be built on the extension of the Miami canal on the State lot, over the expense of placing it at the point where it was first located, which latter arrangement if adopted and completed, will be a much more perfect and desirable one aside from the cost, than that of adopting the works of Morris Seely for a tail race, even if the right of water way throughout said branch canal was ceded to the State.

It will also be apparent from an inspection of said report and estimates that the State is to assume the power of constructing a tail race or channel to pass the water from one level to another across ground not ceded to the State; it will then be far cheaper as well as more desirable with reference to a perfect and secure arrangement to construct a race along the east side of the canal from the State lock directly to the canal below the lock, than to adopt the works of Morris Seely for that purpose.

From a careful examination of the whole subject, the board are unable to discover any material benefit which the State can derive from

the works of Morris Seely, referred to in the act for the relief of said Seely.

The objections to the adoption of so long and circuitous a channel as that presented by the works of Morris Seely as a tail race to convey the water from the proposed site of the mills into the canal below Dayton, are so serious, that were the objections to crossing the grounds of individuals entirely removed and the channel *in its present condition* presented to us by the hand of nature without cost or incumbrance, the board would deem it more advantageous to the State to encounter the additional expense of removing the site of the lock about to be constructed to the State-lot, than to adopt and complete the race and basin of Morris Seely, so as to make it answer the desired purpose.

In relation to the latter branch of the inquiry, the board respectfully state that there is a valuable water power on the present Mad river feeder, which is to be made part of the extension of the Miami canal, and which may be advantageously used on the lot purchased by the State of Morris Seely, by making a tail-race as stated in the preceding part of this report, from thence to the level of the canal below the proposed lock, or by removing the site of the lock to the State lot and constructing it at this point. The board deem it advisable to put this water power in market in the usual manner, by advertising and receiving bids for the right to use it for hydraulic works, so soon as the plan for conveying the water from the mill site to the level below the canal shall be settled.

By order of the Board.

(Signed,) BENJ. TAPPAN,
President.

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